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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 522

THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA AND THE HONORABLE STEPHEN S. CHANDLER, CHIEF JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA, *Petitioner*

v.

OTTO G. LUTES, FLORENCE LUTES, B. B. FRENCH, JEWELL FRENCH, L. O. HOOD, MYRTLE HOOD, D. M. BROWER, MILDRED BROWER, CARL R. STALCUP, MILLIE L. STALCUP, IDA F. WRAY, E. F. BRUCE, GERALDINE BRUCE, J. J. FRENCH, THESIA FRENCH, RIFFE WESLEY, HAZEL RIFFE, OSTBY S. AUSTIN, ETHEL AUSTIN, JESSIE E. BROWN, D. L. HAMILTON, HELEN HAMILTON, HARRY G. RIFFE, MYRTLE RIFFE, G. F. PRICE, FLORA LEE PRICE, LEWIS B. CARPENTER, MARY E. CARPENTER, E. L. CARPENTER AND BLANCHE M. CARPENTER, *Respondents*

BRIEF IN REPLY TO RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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ARGUMENT

As is true of most respectable briefs in opposition to petitions for certiorari, the one filed by Respondents in our case bends every phrase to convince this Court that nothing of consequence has transpired below. So

much is inevitable. But in explaining the stay order herein as part of a "deliberate and calculated strategy of speculating on different decisions in different courts . . ." and in freely imputing forum-shopping motives to Petitioner,[1] Respondents have exceeded the bounds of propriety, logic and useful legal argument.

The best and briefest answer to Respondents' charge is simply that "forum-shopping" is not involved in this case. It was not found as a fact nor assigned as a ground for any decision in the record before this Court. The trial judge alluded to it neither in his denial nor later granting of Petitioner's request for a stay. Nor could any fair-minded analyst conclude that the suspicion of "forum-shopping" played any material role in the 10th Circuit's decision (notwithstanding one altogether gratuitous remark on this point in the court's opinion). In any event, even if there had been some calculated forum-shopping conspiracy, as Respondents now charge, this would not have undercut the propriety of the district judge's act of discretion in issuing a stay order.

Turning from rebuttal to attack, a few defects and misconceptions in Respondents' brief merit quick discussion.

Of central importance is the fact that Respondents nowhere address themselves to the point repeatedly emphasized earlier by Petitioner, *i.e.* that the allowable area of a trial judge's discretion was the essential

[1] Of course, the "petitioner" now before this Court is the Federal District Court for the Western District of Oklahoma, and was not involved as a party in the litigation out of which the original mandamus proceeding arose. The word "petitioner" is thus used in a double sense in the present brief and the two earlier filed before this Court.

question posed for the 10th Circuit. Respondents evidently think that nice rules are written lividly in the skies, clearly setting out what justifies a stay order and what does not. Under any such mechanistic theory of jurisprudence, there might be no "live" legal question here—nor could there be more than precious few anywhere else.

In any event, in spite of their best efforts, Respondents' brief generates significant legal questions by its very terms. At page 13, while casting oblique aspersions upon the petition, Respondents state:

"In order to make that case [*Thompson* v. *Magnolia Petroleum Corp.*] appear to apply here, the petitioners found it necessary to paraphrase the holding there in such a way as to make it directly inconsistent with the later holding of this court, specifically dealing with diversity jurisdiction, in *Meredith* v. *Winter Haven*. . . ."

To appreciate the question generated by Respondents it is first necessary to understand that there is absolutely nothing wrong with Petitioner's paraphrase of *Magnolia*. Respondents do not pinpoint the asserted defect; nor could they if they had tried. Granted that the paraphrase is accurate (and Petitioner trusts the Court to satisfy itself on this point), to describe it as "directly inconsistent" with *Meredith* can only mean that *Magnolia* has been overruled *sub silentio* or else confined in holding to bankruptcy cases. Petitioner doubts that either implication is true, but the legal question thus raised can hardly be described as trivial.

Another significant question raised by Respondents' brief is whether the federal district court involved in this case would be bound, under the *Erie-Guaranty*

doctrine, by a prior decision of the Oklahoma district court for Texas County. Petitioner submits that it would. Respondents, in footnote 2 on page 14, indicate that they feel otherwise. But Respondents neglect to add that the rather peculiar facts relied on in *King* v. *United Travelers*, the case there cited, are not present here. The Oklahoma state court here in question is one of general jurisdiction and an integral part of the state judicial system.

A word about the argument based on *Brillhart* v. *Excess Ins. Co. of America* is also in order. The argument is best brought into focus by recalling that both *Brillhart* and this case involved declaratory judgment actions in federal courts. The fact that it was a declaratory action was not considered at all by the 10th Circuit. Furthermore, the "reasons" for the stay issued here, which Respondents insist were "detailed" (Brief pp. 15-16), are far from plain upon examination of the record.

In chivvying at Petitioner's suggestion of importance in this case, Respondents argue that there is no conflict between the 10th Circuit decision and those in *Mottolese* v. *Kaufman*, 176 F. 2d 301, and *Biersdorf & Co.* v. *McGohey*, 187 F. 2d 301, two Second Circuit cases cited in the petition. Petitioner's point there was, as stated, that the "differences in tone and policy" between those decisions and the instant one were "especially marked." Petitioner stands on this statement. In *Mottolese*, Judge Hand very thoughtfully reviewed, on a mandamus action, a federal district judge's stay order, concluding that the stay lay within the judge's allowable area of discretion principally, if not solely, because the same issues were involved in contemporaneous state court proceedings. Indeed, in *Mottolese*

the questions of law were not even novel or far reaching in consequence as is true of the questions covered by the stay order issued in the instant case. Furthermore, in *President and Fellows of Harvard College*, 149 F. 2d 69 (1st Cir. 1945), a case cited in *Mottolese*, Judge Magruder in the course of a carefully reasoned opinion, views with favor the "danger of futility" argument (advanced in the petition at page 12); noting that in such instances "[w]ith this possible outcome of the [state] litigation in mind, it might well be proper for the federal district court, as an appropriate exercise of discretion, to stay the proceedings before it until the handing down by the state Supreme Court of the controlling ruling on the point of state law." 149 F. 2d 73. This is exactly what has happened here. If after a reasonable interval there is no decision by the Oklahome Supreme Court, the federal district court below will undoubtedly go forward with the adjudication.

Two other points are advanced on page 13 of Respondents' brief, although so weakly that Respondents may not expect them to be taken seriously. They assert that the 10th Circuit's opinion did not ignore "the federal policy favoring conformity in diversity cases. . . ." Petitioner had earlier contended that the court had ignored the policy favoring *uniformity of result* in diversity cases. Since an Oklahoma court of general jurisdiction has already adopted a rule of law *precisely contradictory* to the rule favored by the 10th Circuit in the instant case, Petitioner's argument seems patently correct. Respondents' rejoinder, therefore, is without merit.

Respondents also seem to cavil, albeit quite circumspectly, with Petitioner's contention that the instant case involves interests in realty. But a leasehold in-

strument does indeed concern interests in land, in Oklahoma just as in most states. *Nicholson Corp.* v. *Ferguson*, 243 P. 195 (Okla.); *Franklin* v. *Margay Oil Corp.*; 153 P. 2d 486 (Okla.). Respondents' unqualified footnote 3 on page 13 is therefore misleading.

CONCLUSION

The tack followed by the district court, Petitioner submits, was both a sound and permissible exercise of its discretion. The 10th Circuit's analysis of the stay order was singularly insensitive to the special requirements for review of a judicial act of discretion and delusively categorical in its approach to the question generally. In this Respondents have elected to follow the 10th Circuit. But error is error, from whatever quarter it emanates. And Petitioner indulges the hope that in deciding whether error has been perpetrated or significant issues have arisen in this case, this Court will not be bound by the somewhat limited perspectives of Respondents and the 10th Circuit.

Respectfully submitted,

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